

REMARKS/ARGUMENTS

Attorney Docket Number

Applicant would like to inform the Examiner that it is represented by new counsel in the present matter. As such, Applicant respectfully requests that the Attorney Docket Number for the present case be changed from "3295-0024-0CONT" to "OHI 1717-096." Applicant also respectfully requests that the Examiner use this new docket number in all future correspondence relating to the present application. Applicant would also like to inform the Examiner that a change in Power of Attorney was submitted to the PTO several months ago with respect to the present application, but appears to not yet have been recorded.

Information Disclosure Statement

The Examiner's rejection of the foreign language document citations included in the June 04, 2004 Information Disclosure Statement is acknowledged.

In the Claims:

Claims 75-78, 80, 85, 88-89, 92-94, 96, 99, 102-103, 106-107, 110-111, 114-115 and 118-165 remain pending in the present application. Claims 75-77, 80, 85, 88, 89, 92-94, 96, 99, 102, 103, 106, 107, 110, 111, 114, 115, and 118-120 have been amended. Claims 86, 90 and 91 have been canceled in the present response. Claims 124-165 have been added. No new material has been added.

Rejection of Claim 86 Under 35 U.S.C. § 112

The Examiner rejected claim 86 under 35 U.S.C. § 112, second paragraph, as being indefinite for depending from a canceled claim. Applicant has canceled claim 86, thereby rendering this rejection moot.

Rejection of Claims 86 Under 35 U.S.C. § 112

The Examiner rejected claims 75-78, 80, 85-86, 88-89, 92-94, 96, 99, 102-103, 106-107, 110-111, 114-115 and 118-121 under 35 U.S.C. § 112, first paragraph, as containing subject matter that was not adequately described in the specification. More specifically, the Examiner asserts that the terms "non-porous" and "non-porosity" are not supported by the specification. Applicant has amended claims 75-77, 80, 85, 88, 89, 92-94, 96, 99, 102, 103, 106, 107, 110, 111, 114, 115, and 118-120 to more clearly describe the subject matter recited therein. Any reference to "non-porous" or "non-porosity" has been removed from the amended claims. As such, Applicant respectfully submits that the Examiner's 35 U.S.C. § 112 rejection of claims 75-78, 80, 85-86, 88-89, 92-94, 96, 99, 102-103, 106-107, 110-111, 114-115 and 118-121 has been rendered moot and may, therefore, be properly withdrawn.

Apparent Rejections With Respect to Previously Cited Prior Art

Although the Examiner has not issued any prior art rejections of the pending claims in the present Office Action, it appears that such rejections were made in the Office Action of August 19, 2003. Although the present Office Action contains only 35 U.S.C. § 112 rejections, in an attempt to expedite allowance of the present application,

Applicant would like to briefly distinguish the present form of the claims over the teachings of the references previously cited as prior art by the Examiner.

Applicant has amended the presently pending claims to recite that the polymeric cushioning material of the cushion liners "is capable of forming an air-tight seal with the amputation stump when said liner is worn." Applicant has deleted any reference to the polymeric cushioning material being "non-porous," which language was rejected by the Examiner. Applicant respectfully submits that the claims also now clearly recite that the polymeric cushioning material resides only on an inside surface of a fabric covering, and that it is the polymeric cushioning material that is in contact with the skin of the amputation stump when the liner is worn - not the fabric covering. Applicant also submits that the language reciting that the polymeric cushioning material "is capable of forming an air-tight seal with the amputation stump" better comports with the allowed claim language of U.S. Patent No. 6,406,499, which is related to the present application.

Applicant submits that none of GB 2 213 380 A, US 4,635,626 (Lerman), or SU 1739990 A1, which to Applicant's knowledge were the references cited in the August 19, 2003 Office Action, teach a cushion liner as recited in the rejected claims. Applicant submits that GB 2 213 380 A is not capable of forming an air-tight seal with an amputation stump because it is specifically stated therein that the cover material is comprised of a PTFE material that is capable of transmitting water vapor and gases. Hence, a liner made from such a material would be capable of transmitting air - a gas. As further evidence that the cover of GB 2 213 380 A cannot form an air-tight seal, it is suggested that a secondary rim must be fitted to the cover to aid in its retention on the amputation stump.

Further, the cover of GB 2 213 380 A does not appear to be a cushion liner. Based on the selected cover material and a suggested thickness of only 0.0035 inches, Applicant respectfully submits that the cover would provide for virtually no cushioning. In fact, it appears that a wool sock having a thickness that is multiple times that of the cover must be simultaneously worn to assist in cushioning the amputation stump.

Additionally, the goal of GB 2 213 380 A appears to be a cover that wicks perspiration, in the form of water vapor, to the outside of the cover where it can be absorbed by the wool sock. This is opposite to the function of the cushion liner of the present invention. Rather, the cushion liner of the present invention is designed to prevent the permeation of perspiration through the liner. It is preferred that any perspiration be contained by the polymeric cushioning material, thereby ensuring that the exterior of the liner remains dry.

The Lerman reference teaches two variations of a prosthetic stocking (stump sock): a temporary post-operative stump sock, and a permanent stump sock. However, as a result of the materials used in Lerman, both stump socks are porous to both air and water (and other gases and fluids) and, consequently, are incapable of forming an air-tight seal with the limb of a wearer. While the temporary stump sock and permanent stump sock may have slightly different constructions, it is clear that the main objective of both designs is to allow air and/or other fluids to easily pass therethrough. In fact, it is particularly stated that the breathability of the temporary stump sock base material not only ensures good air circulation to the stump, but also facilitates the dissipation of heat and the absorption of fluids during the healing process.

In contrast, a cushion liner, as recited in the present claims, is not, and cannot be, porous to air and water - as are the stump socks described in Lerman. If the polymeric material of the present invention were able to "breathe," as does the material in Lerman, an air-tight seal could never be formed thereby.

It is noted by Applicant that Lerman does mention the possible use of neoprene rubber as the base layer of the composite used to make the permanent stump sock. However, it is expressly stated that such a material is disfavored due to its closed-cell composition. (See column 5, lines 21-23). In addition, even if a closed-cell neoprene rubber were used as the base layer in Lerman, it is still required that its inner surface have a fabric layer adhered thereto. (See column 5, lines 27-29; and Fig. 7). As such, even this theoretical, but disfavored embodiment of the Lerman stump sock, fails to teach the cushion liner as claimed in the present application.

With respect to the SU 1739990 A1 reference, Applicant respectfully submits that the liner taught thereby is considerably different than a cushion liner of the rejected claims. The cushion liner of the present invention includes a polymeric cushioning material that is disposed on only the inside surface of a fabric cover. The polymeric cushioning material is capable of forming an air-tight seal with the amputation stump, and it is the polymeric cushioning material that is in contact with the skin of the amputation stump when the liner is worn. In contrast the liner of SU 1739990 A1 consists of an inner and outer fabric layer, between which is disposed one or more cushioning pads provided to protect the distal end of the amputation stump as well as one or more bony prominences on the amputation stump.

Consequently, SU 1739990 A1 does not teach a liner having a polymeric cushioning material coated seamlessly to only the inside surface of a fabric cover, or to any cover. SU 1739990 A1 also fails to teach a liner wherein a polymeric cushioning material is in contact with the skin of an amputation stump when the liner is worn by a user. Rather, it is the inner fabric layer that is in contact with the amputation stump when the SU 1739990 A1 liner is worn.

The SU 1739990 A1 reference further fails to teach or suggest that the cushioning material used therein is capable of forming an air-tight seal with an amputation stump when the liner is worn. And, even if the cushioning material of the SU 1739990 A1 liner had such an ability, no such air-tight seal could be formed because the cushioning material is separated from the amputation stump by a layer of fabric.

Therefore, in light of these significant differences, Applicant respectfully submits that the GB 2 213 380 A, Lerman, and SU 1739990 A1 references cannot support a rejection of the presently pending claims. Consequently, Applicant respectfully requests that the Examiner pass the presently pending claims, as amended, to issuance.

CONCLUSION

Applicant has amended claims 75-77, 80, 85, 88, 89, 92-94, 96, 99, 102, 103, 106, 107, 110, 111, 114, 115, and 118-120, has canceled claims 86, 90 and 91, and has added new claims 124-165. Applicant has also distinguished the subject matter of the present invention over the teachings of the references previously cited as prior art by the Examiner.

Therefore, Applicant respectfully submits that the present application is now in condition for allowance, and entry of the present amendment and allowance of the application as amended is earnestly requested. If, however, the Examiner maintains his rejection, entry of the present amendment is respectfully requested as reducing the number of issues and placing this application in better condition for appeal.

Telephone inquiry to the undersigned in order to clarify or otherwise expedite prosecution of the present application is encouraged.

Respectfully submitted,

Date: 11-22-04

By:

A handwritten signature in black ink, appearing to read "Eric M. Gayan", is written over a horizontal line.

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